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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1927.

No. 217.

HARRY LEVY, BANKRUPT, PETITIONER,

vs.

INDUSTRIAL FINANCE CORPORATION, METROPOLITAN TRUST COMPANY, AND CHATHAM & PHENIX NATIONAL BANK OF NEW YORK.

BRIEF FOR PETITIONER.

The judgment of the Circuit Court of Appeals for the Fourth Circuit, to which this writ has been granted, is styled Harry Levy *versus* Industrial Finance Corporation, 16 Fed. (2nd), 769.

Grounds of Jurisdiction.

1. The Circuit Court of Appeals for the Fourth Circuit, by its opinion filed January 11, 1927 (R., 129-138), and judgment of January 13, 1927 (R., 140), so con-

strued subsection 3 of Section 14-B of the Bankrupt Act as to give such meaning and effect thereto as is in direct conflict with the construction given said subsection 3 of Section 14-B by the Circuit Court of Appeals for the Second Circuit.

2. The legal proposition involved is of great importance to the general public and the parties in that it is proper that sub-section 3 of Section 14-B of the National Bankruptcy Act should be construed by this Honorable Court in order that there may be uniformity of construction thereof.

3. An important question of Federal law has been decided by said respective circuit courts of appeal which should be finally settled by this Honorable Court.

A review and reversal of the judgment of the Circuit Court of Appeals for the Fourth Circuit is sought pursuant to Section 240 of the Judicial Code as amended by the Act of February 13, 1925, C. 229, Secs. 1, 13; 43 Stat. 936, 941; Title 11, Sec. 48, U. S. C. A. See Forsyth *vs.* Hammond 166 U. S., 506, 514; Am. Const. R. Co. *vs.* Jacksonville, etc., Ry. Co., 148 U. S., 384.

Statement.

On the 10th day of December, 1924, the petitioner was adjudged a bankrupt by the District Court of the United States for the Eastern District of Virginia; on the 14th day of January, 1925, the petitioner filed his petition for discharge in bankruptcy, attached to which petition was the recommendation of the trustee

of his estate in bankruptcy and the referee in bankruptcy recommending the granting of such discharge.

On the 30th day of March, 1925, the respondents, Chatham and Phenix National Bank of New York City, Metropolitan Trust Company of New York City and the Industrial Finance Corporation of New York City, filed specifications in opposition to the discharge of said bankrupt (R., 7), to which said specifications the bankrupt duly filed his exceptions (R., 9). Thereafter the respondents filed an amended specification of objections to the petitioner's discharge as a bankrupt (R., 9), to which said amended specification the petitioner filed his exceptions and answer (R., 40).

The essential facts as set forth in the decision of the Circuit Court of Appeals for the Fourth Circuit are as follows:

The objecting creditors, in September, 1922, made a large loan to the Amercian Home Furnishers Corporation, a corporation whereof the bankrupt was president and a large stockholder and the endorser of the bonds evidencing said loan.

The specifications in opposition to the discharge were based upon gross misrepresentation of the value of the assets of the American Home Furnishers Corporation, as evidenced by two certain paper writings, one being known as original Exhibit "A," being a statement of the assets and liabilities of said corporation prepared and signed by Robert A. Shreffler, Assistant Treasurer of the corporation, and delivered by Harry Levy, the bankrupt, to the objecting creditors or their representatives, and the other being known as

original Exhibit "C," being a report by Messrs. Haskins and Sells, Certified Public Accountants, the latter report being predicated upon the books of the corporation, which were padded to the extent of a large sum of money and in the respect that accounts of no value were treated as live assets.

The Honorable District Court of the United States for the Eastern District of Virginia did on the 24th day of June, 1925, by proper order, refer to the Honorable R. T. Thorp, as Special Master, the issues raised by said specification, exceptions and answer thereto, for finding and report to the court (R., 50).

The Special Master on the 11th day of September, 1925, pursuant to the decree of reference, made his findings of fact and reported to the court as follows (R., 53-60):

1. That the objectors have failed to show that the written statements relied on were materially false at the times they were made.

2. That they have failed to show that the money was obtained on any known false statement in writing made by Levy.

3. That the $1,500,000 was loaned by the objectors, not because of any statement made by Levy, but upon the audit made by Haskins and Sells, Certified Public Accountants, designated or accepted for that purpose by the objectors themselves.

4. That even if false, the objectors have failed to show that Harry Levy had knowledge of their falsity

or, in the matter of obtaining the money of the objectors for the corporation, Harry Levy acted otherwise than in good faith; therefore it is recommended that he be granted his discharge.

To which findings and report the objecting creditors, on the 25th day of September, 1925, filed exceptions (R., 119), and upon a hearing thereon the district court sustained said exceptions and entered a final order denying to your petitioner his discharge in bankruptcy (R., 121-123), finding that the bankrupt, as an officer of the corporation, caused the financial statements to be delivered to the objecting creditors knowing them to be false in fact, and relying thereon the objecting creditors loaned to the corporation a large sum of money, which was received by and used solely for the corporation's purposes. The district court held that the bankrupt, being the largest stockholder in the corporation and the endorser of the corporation's bonds, though he neither obtained nor received the money, nor was any part thereof used for his personal benefit, that he had obtained money or property on credit upon a materially false statement in writing, which barred his INDIVIDUAL DISCHARGE (R., 121-122).

To the final judgment of the district court, your petitioner sued out an appeal from and filed his petition to review and revise in matter of law the final judgment of said district court.

The Circuit Court of Appeals for the Fourth Circuit on the 13th day of January, 1927, pronounced its judgment (R., 140) dismissing the petition to review

and revise and affirmed the judgment of the district court on appeal.

Error Assigned Intended to be Urged.

The Circuit Court of Appeals for the Fourth Circuit erred in its construction of subsection 3 of Section 14-B of the National Bankruptcy Act as amended by the Act of 1910. The specifications in opposition to the bankrupt's discharge are based upon said section of the Bankruptcy Act, so much of which as is pertinent is as follows:

> "Obtained money or property on credit upon a materially false statement in writing, made by him to any person or representative for the purpose of obtaining credit from such person."

The said Circuit Court of Appeals for the Fourth Circuit so construed subsection 3 of Section 14-B of the Bankruptcy Act in this case as to create irreconcilable conflict with the construction thereof by the Circuit Court of Appeals for the Second Circuit in *In re* Applebaum, 11 Fed., 2d Ed., 685-686.

The Circuit Court of Appeals for the Fourth Circuit held upon a like state of facts in this case as existed in *In re* Applebaum, 11 Fed., 2d Ed., 685-686, that the bankrupt is, as an individual, upon his petition for discharge from his individual liabilities, deprived of discharge under subsection 3 of Section 14-B of the Bankruptcy Act, if, while acting as an officer of a corporation, he obtains for the corporation money or credit upon a materially false written statement of the corpo-

ration's financial condition, though he obtained or received no part of such money or was any credit extended to him individually.

The ground for such ruling is that the bankrupt as a stockholder in the corporation and endorser of its paper of necessity profited thereby.

The Circuit Court of Appeals for the Second Circuit in *In re* Applebaum, *supra,* decided that the bankrupt, though his relation to the corporation was the same as that of your petitioner, having obtained no part of the money or credit, was not deprived of his individual discharge.

Legal Proposition Involved.

The sole legal proposition here involved is clearly stated in the opinion of the Circuit Court of Appeals for the Fourth Circuit, as follows (R., 133):

> "This brings us to the real question of the case: Is the bankrupt entitled to discharge, notwithstanding the making of the false statements in writing, because the money which was obtained by means thereof was received not by him but by the corporation?"

The question presented in this case was decided by the Circuit Court of Appeals for the Second Circuit in *In re* Applebaum, 11 Fed., 2d Ed., 685-686. The facts in that case are found at page 686 and are as follows:

> "The false financial statement was issued to obtain money for the corporation upon notes made by it, endorsed by him, and taken by the

creditor. It was signed by the bankrupt, but the money went to the corporation, and there was no evidence that he obtained any part of it for himself, or intended to do so at the time when he issued it, except in so far as he might later withdraw it from the business."

Based upon these facts the Circuit Court of Appeals for the Second Circuit held that the bankrupt was entitled to his discharge in bankruptcy, and said:

"The appellant relies on *In re* Bleyer, 215 F. 896, 132 C. C. A. 236 (C. C. A. 2) but that came up on exceptions to the specifications which expressly alleged that the bankrupt had obtained some part of the money lent to his corporation. That alone saved the specifications. The same is true of *In re* Dresser, 146 F. 383, 76 C. C. A. 655 (C. C. A. 2).

"If it is necessary under Section 14-B (3), (Comp. St. 9598), to show that the bankrupt got any of the property, the evidence is not sufficient. The corporation got it, and so far as appears he never withdrew any part of it, and, although he owned all the stock, there is no evidence that he ignored the corporate entity or treated the corporate till as his own. So the case presents the question whether the word 'obtains,' in Section 14, means that the bankrupt gets the money or property himself, or whether it is enough that he is the means of getting it for a third person. To put a bare instance: Suppose the bankrupt wishes to accommodate another person and indorses his note, making a false statement as to the maker's financial ability, to secure its acceptance. The holder would be the bankrupt's cred-

itor, but by hypothesis the money would go to the maker. A majority of the court believes that the statement would not bar the bankrupt's discharge, because he had not obtained the money.

"The English statute against false pretenses, in its original form, was interpreted as requiring the accused to get the property. Rex *v.* Garrett, 6 Cox C. C. 260; Jones *v.* U. S., Fed. Cas. No. 7499; Willis *v.* People, 19 Hun. 84; People *ex rel.* Phelps *v.* General Sessions, 13 Hun. 396, 400; Bracey *v.* State, 64 Miss. 26, 8 So. 165. It was changed (24 and 25 Vict. c. 96, Sec. 89), and today either by statute or by decision the law is generally the other (Commonwealth *v.* Harley, 7 Mete. (Mass.) 462; Commonwealth *v.* Langley, 189 Mass. 89, 47 N. E. 511; Fisher *v.* State, 161 Ark. 586, 256 S. W. 858; People *v.* Woods, 59 Cal. App. 740, 212 P. 41; People *v.* Aronson, 173 App. Div. 734, 156 N. Y. S. 396, affirmed 218 N. Y. 684, 113 N. E. 1062).

"*In re* Dunfee, 219 N. Y. 188, 144 N. E. 52, construing Section 17 (2), (Comp. St. 9601), does not touch the question. Some of the cases are to be distinguished, because the accused was indicted as accessory, State *v.* Davis, 56 Kan. 54, 42 p. 348; Sandy *v.* State, 60 Ala. 58; People *v.* Moran, 43 App. Div. 155, 59 N. Y. S. 312, affirmed 161 N. Y. 857, 57 N. E. 1120; Griggs *v.* U. S., 158 F. 572, 85 C. C. A. 496 (C. C. A. 9). It may be that Section 14-B (3) was drawn following the statute of false pretenses, but the majority thinks that, if so, the original interpretation was the right one, and that in any case, when Congress chose the same words, it must be supposed to have accepted the original interpretation along with them."

This Honorable Court on the 18th day of October, 1926, denied a petition for writ of certiorari to review the judgment of the Circuit Court of Appeals for the Second Circuit. State Bank *vs.* Philip Applebaum, No. 508, U. S. Sup. Ct. Adv. Op., November 15, 1926, 71 L. Ed., 129.

The United States Circuit Court of Appeals for the Fourth Circuit declined to follow the decision of the Circuit Court of Appeals for the Second Circuit in *In re* Applebaum, 11 Fed., 2d Ed., 685, as set forth in its opinion at page 128 of the record, as follows:

> "We have given careful consideration to the case of *In re* Applebaum (C. C. A. 2nd), 11 Fed. (2) 685, which seems to give support to the contention of bankrupt; but, while we have great respect for the court which rendered that decision, we cannot follow it. In our opinion, the doctrine there announced would in effect add to the bankruptcy act a provision not contemplated by Congress, and one not in harmony with the reason and spirit of the law. It may not be amiss to note that that was a *per curiam* decision by a divided court,"

but based its ruling upon the decisions of the District Courts of the Second Circuit in the cases of *In re* Hammerstein, 189 Fed., 37, and *In re* Aldridge, 168 Fed., 93, and quotes at length from the case of *In re* Dresser, 144 Fed., 318, overruled or explained in *In re* Applebaum, *supra* (Circuit Court of Appeals for the Second Circuit).

ARGUMENT.

The adjudication of bankruptcy, the order denying the discharge, and the order allowing the appeal, were entered prior to the going into effect of the Act of May 27, 1926, amending the National Bankruptcy Act, and it is not questioned that the case is governed, both as to the rights of the parties and as to procedure, by the law as it existed prior to the amendment.

Section 14-B, subsection 3, of the Bankrupt Act as amended by the Act of June 25, 1910, C. 412, Sec. 6, 36 Stat. 839, provides that—

> "The judge shall hear the application for a discharge and such proofs and pleas as may be made in opposition thereto, etc., * * * and discharge the applicant unless HE HAS * * * obtained money or property on credit upon a materially false statement in writing, made by him to any person or his representative for the purpose of obtaining credit from such person."

The amended specifications in opposition to discharge are as follows:

> "The above named bankrupt has obtained money on credit upon materially false statements in writing, made by him to the objecting creditors above named, for the purpose of obtaining credit from the said creditors, in that on or about the 30th day of September, 1922, the said bankrupt, AS THE PRESIDENT OF THE AMERICAN HOME FURNISHERS CORPORATION OF NORFOLK, VIRGINIA, did knowingly and fraudulently furnish materially false statements in

writing to the above-mentioned creditors of the FINANCIAL CONDITION OF THE SAID AMERICAN HOME FURNISHERS CORPORATION, which represented the financial status of the American Home Furnishers Corporation to be good and substantial, whereas in truth and fact said statements were materially false and were made by the said bankrupt FOR THE PURPOSE OF OBTAINING FROM THE ABOVE-MENTIONED CREDITORS, MONEY AND ON CREDIT FOR THE SAID CORPORATION, which would in turn be a benefit to him as the principal stockholder of said corporation, and which materially false statements were relied upon by the said above-mentioned creditors, AND THE MONEY THEREAFTER WAS OBTAINED ON CREDIT BY THE SAID BANKRUPT, AS PRESIDENT OF THE SAID AMERICAN HOME FURNISHERS CORPORATION from the said above-mentioned creditors, upon a series of notes aggregating $1,500,000.00, each of which notes was guaranteed by said bankrupt, as will appear from an indenture protecting said notes and describing same, a copy of which is attached hereto as Exhibit 'A'." (Capitals ours.)

To said amended specifications the bankrupt duly filed his exceptions (R., 49).

The provisions of law relating to discharge of a bankrupt are to be construed favorably to the bankrupt.

In re Jacobs, 241 Fed., 620.
In re Rosenfeldt, 262 Fed., 876.
In re Reisler, 278 Fed., 618.
In re Braus, 248 Fed., 55.

A discharge can be refused only on one or more of the specific grounds mentioned in the statute, not on account of any acts or conduct on the part of the bankrupt, however reprehensible, which do not come clearly within the words of the law.

Robinson *vs.* Williston & Co., 266 Fed., 970.
W. A. Liller Building Co. *vs.* Reynolds, 247 Fed., 90.

The provisions of Section 13-B, subsection 3, cannot be extended by construction, but must be given a strict construction in favor of the bankrupt.

In re Rosenfeldt, 262 Fed., 876.
In re Oliner, 256 Fed., 734.

It is most respectfully submitted that in order to defeat the discharge of the bankrupt herein, the objecting creditors must bring his act or acts within the letter of the statute.

The language of the statute is:

> "The judge shall * * * discharge the applicant unless *he* (meaning the bankrupt) *has* (1) obtained money or property on credit, (2) upon a materially false statement in writing (3) made to the creditor or its representative or agent for the express purpose of obtaining such money or credit."

The specifications in opposition to discharge aver that the money obtained or the credit given was upon a materially false statement made by the *president of the corporation* for the express purpose of obtaining

such money or credit *for the corporation,* and allege further that he, the bankrupt herein, was the guarantor of each and every one of the notes *given by the corporation* upon which the money was obtained (R., 10-11).

By no construction of the language of the amended specifications could it be said that the amended specifications contain any charge that *the bankrupt as an individual* obtained money or property on credit upon a materially false statement in writing made to the creditor for such purpose. So much of the charge in the amended specifications (R., 10) as charges that he (the bankrupt herein) was the guarantor upon a series of notes upon which money was obtained from the objecting creditors is necessarily a statement that he, the bankrupt, loaned his credit and financial strength to the corporation rather than a suggestion that he individually obtained money or property or personally benefited thereby.

The statute penalizes by the denial of a discharge to the bankrupt the commission of the act of obtaining money or property on credit as provided by subsection 3 of Section 14-B therefore, the only reasonable construction thereof is such that leads irresistibly to the conclusion that the word "obtained" is used in the limited and restricted sense that it applies only to the act of the person who seeks the discharge. If the word "obtained" is to be so interpreted as to include acts of the bankrupt not committed in connection with his individual bankruptcy, then there would be read into the statute by construction every act in which he may have ever been concerned as an agent, officer, or

indeed employe, of any corporation as ground for the denial of a discharge.

In Robinson *vs.* J. R. Williston & Co., Circuit Court of Appeals, First Circuit, 266 Fed., 971, referring to the construction placed upon Section 14-B, subsection 3, Amendment of 1910, dealing with the legislative history of this section, at page 971, the court says:

> "In its report, the Senate Judiciary Committee stated that it considered the House amendment too harsh and 'that any tendency to make the bankruptcy act unduly harsh is to be avoided.'"

If the word "obtained" as employed in Section 14-B, subsection 3, is used in its commonly accepted sense, it is defined:

> "To bring into one's own possession, procure especially by effort, whether for temporary or permanent purposes; acquire."
>
> Funk & Wagnalls New Standard Dictionary of the English Language.

It is most respectfully submitted that any other construction would be to defeat the legislative intent, and that the Circuit Court of Appeals for the Second Circuit, having in mind the application of the statute to various situations in which it was sought to give it such strained construction by the district courts in said circuit as to deny relief to an individual on account of his acts as a corporate officer, has construed Section 14-B, subsection 3, and made clear its true intent and meaning in *In re* Applebaum, 11 Fed. (2d), 685, in which the Court says at page 687:

"It may be that Section 14-B (3) was drawn following the statute of false pretenses, but the majority think that, if so, the original interpretation was the right one, and that in any case, when Congress chose the same words, it must be supposed to have accepted the original interpretation along with them."

Conclusion.

It is most respectfully submitted for the reasons assigned that the judgment of the Circuit Court of Appeals for the Fourth Circuit should be reversed and judgment entered granting to your petitioner his discharge in bankruptcy.

Respectfully submitted,

S. M. BRANDT,
Attorney for Petitioner.

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Supreme Court of the United States

OCTOBER TERM, 1927.

No. 217.

HARRY LEVY, Bankrupt,

Petitioner,

v.

INDUSTRIAL FINANCE CORPORATION, METROPOLITAN TRUST COMPANY, and CHATHAM & PHENIX NATIONAL BANK OF NEW YORK,

Respondents.

BRIEF FOR RESPONDENTS.

The judgment of the Circuit Court of Appeals for the Fourth Circuit, to which this writ has been granted, is styled Harry Levy *versus* Industrial Finance Corporation, 16 Fed. (2nd), 769.

Grounds of Jurisdiction.

This Court, by order filed May 16, 1927 (Rec., 141) granted a petition for a writ of certiorari to the United States Circuit Court of Appeals for the Fourth Circuit.

Statement.

On the 10th day of December, 1924, the petitioner was adjudged a bankrupt by the District Court of the United

States for the Eastern District of Virginia; on the 14th day of January, 1925, the petitioner filed his petition for discharge in bankruptcy.

On the 30th day of March, 1925, the respondents filed specifications in opposition to the discharge of the petitioner as a bankrupt (Rec., 7), to which said specifications the petitioner duly filed his exceptions (Rec., 9). Thereafter the respondents filed amended specifications of objections to the petitioner's discharge as a bankrupt (Rec., 9), to which amended specifications the petitioner filed his exceptions and answer (Rec., 49).

The Honorable District Court of the United States for the Eastern District of Virginia, did, on the 24th day of June, 1925, by proper order, refer to the Honorable R. T. Thorp, as Special Master, the issues raised by said specifications of objections to discharge, exceptions and answer thereto for finding and report to the Court (Rec., 50).

The Special Master on the 11th day of September, 1925, in obedience to the decree of reference, made his findings of fact and recommended that the petitioner be granted his discharge (Rec., 53-61).

The respondents, as objecting creditors, on the 25th day of September, 1925, filed exceptions to the findings and report of the Special Master (Rec., 119) and upon a hearing thereof, the District Court sustained said exceptions and entered a final order denying to the petitioner his discharge in bankruptcy (Rec., 121-123).

The petitioner sued out an appeal from and filed his petition to review and revise in matter of law the final judgment of said District Court. The Circuit Court of Appeals for the Fourth District, on the 13th day of January, 1927, pronounced its judgment (Rec. 140) dismissing the petition to review and revise and affirming the judgment of the District Court on appeal.

This Court, by order filed May 16, 1927 (Rec. 141), granted a petition for a writ of certiorari to the United States Circuit Court of Appeals for the Fourth Circuit.

Argument.

This case presents the following question:

"Is the bankrupt entitled to discharge, notwithstanding the making of the false statements in writing, because the money which was obtained by means thereof was received not by him but by the corporation?" (Rec., 133).

There is involved the construction of Section 14-b(3) of the Bankruptcy Act of 1898, as amended in 1903 and 1910. Said Section 14-b(3) reads as follows:

> "Sec. 14. *Discharges, when granted.*— * * *
>
> "(b) The judge shall hear the application for a discharge, and such proofs and pleas as may be made in opposition thereto by the trustee or other parties in interest, at such time as will give the trustee or parties in interest a reasonable opportunity to be fully heard, and investigate the merits of the application and discharge the applicant unless he has * * * (3) obtained money or property on credit upon a materially false statement in writing, made by him to any person or his representative for the purpose of obtaining credit from such person; * * *."

The Circuit Court of Appeals for the Fourth Circuit has held that under said Section 14-b(3) of the Bankruptcy Act of 1898 as so amended, the petitioner herein is not entitled to his discharge.

The essential facts upon which the Circuit Court of Appeals based its opinion, and as to which there is no dispute before this Court, are set forth in the opinion of the Circuit Court of Appeals as follows (Rec., 131-132), 16 Fed. (2nd) 770, 771:

"In 1922, the bankrupt was president of the American Home Furnishers' Corporation, a concern in which he and his sister-in-law owned more than two-thirds of the 30,000 shares of stock and of which he had general management and control. Prior to obtaining the money on the statements in question here, he and his sister-in-law had borrowed $550,000 on their real estate holdings, out of which debts of the corporation had been paid, and this gave him an added interest in keeping it afloat. On September 30, 1922, he obtained a loan of $1,500,000 for the corporation from objectors, upon a series of notes, the payment of which he guaranteed personally. To obtain this loan, he first furnished to objectors a financial statement of the company, and later transmitted to them an audit made by auditors employed by the corporation with their approval. Both the financial statement and the audit were false, in that they showed the assets of the company to be greater than they actually were by a very large amount. They were based on books which had been padded by carrying the same merchandise on two inventories, and by carrying as assets worthless accounts in cases where goods sold had been repossessed for failure to meet payments. In the latter class of cases both the accounts and the repossessed merchandise were carried as assets. It was shown that the padding due to the manipulation of inventories amounted to nearly half a million dollars, and that the padding due to the carrying of worthless accounts as assets amounted to a very large sum, making a total overvaluation of approximately $1,000,000 in a business whole assets exceeded its liabilities, exclusive of stock liabilities, by only about $3,000,000.

"The padding of the books was discovered in the spring of 1923, when one Schreffler, the assistant treasurer, disclosed the condition of affairs at

a meeting of representatives of banks which was being held with a view of refinancing the corporation. Schreffler stated that this padding of the books had existed since prior to the furnishing of the statement and audit upon which the $1,500,000 loan had been made, and evidence was introduced on the hearing sustaining this statement on his part. He also stated that the books had been padded at the direction of the bankrupt; and one Morris, the representative of the objectors who was present at this meeting, testifies positively that, when bankrupt was called into the meeting and confronted with these charges, he admitted them to be true, but pleaded that what he had done had been done, not for personal profit, but in an effort to save the company. The corporation was placed in bankruptcy some months thereafter, and the bankrupt's guaranty of its notes necessitated his being placed in bankruptcy also; his liability on these notes constituting the principal liability of his estate.

"There is practically no question under the evidence that the written statements furnished as the basis for securing the loan for the corporation were materially false and that the objectors relied upon them in making the loan. We are satisfied, also, that they were false to the knowledge of the bankrupt. It is true that he denies knowledge of the padding of the books, and denies making the admission testified to by Morris, and in fairness to him it should be stated that he produced two witnesses who were present at the meeting, and who testified that they did not remember hearing him make the admission. On the other hand, it is certain that the books were padded, and that bankrupt was deeply interested in the corporation and had complete charge of its affairs. No one else, so far as the evidence shows, had any interest in padding the books, and it is inconceivable that

they should have been padded as they were without his knowing of it."

POINT I.

Section 14b(3) of the Bankruptcy Act of 1898, as amended in 1903 and 1910, should not be construed to mean that the bankrupt must have received the "money or property" personally.

(a) *The language of Section 14b(3) does not indicate a legislative intent to restrict its scope to cases where the bankrupt has received the property personally.*

Section 14b(3) says merely "*obtained* money or property on credit upon a materially false statement in writing, made by him to any person or his representative for the purpose of obtaining credit *from such person.*"

The meaning of a statute must first be sought in the language employed and if that be plain it is the duty of the courts to enforce the law as written.

> *United States* v. *Standard Brewery*, 251 U. S. 210;
> *Thompson* v. *United States*, 246 U. S. 547.

It is respectfully submitted that the language of Section 14b(3) is plain and expresses clearly a legislative intent to make the section applicable to all cases where a bankrupt has deprived any person of his money or property by means of false statements in writing.

A court in interpreting a statute should first read the statute according to the natural and obvious import of its language and if the language is plain should not insert words or phrases so as to incorporate in the statute a new and distinct provision.

> *United States* v. *Temple*, 105 U. S. 97, 99;
> *Moore* v. *United States*, 249 U. S. 487.

Congress was free to limit the scope of Section 14b(3) to cases where the bankrupt has personally received or obtained property by means of his false statements by inserting in the statute such words as "for himself" or "for his own use" or words of similar import. It is respectfully submitted that since Congress did not so limit Section 14b(3), this Court in construing the section, should not so limit it by implication. To do so would be to amend the statute, not to construe or interpret it.

(b) *To so limit the scope of Section 14b(3), would tend to defeat the legislative intent of Congress in adopting it.*

The words of a statute are not to be bent one way or another, but to be taken in the sense which would best emphasize the legislative intent.

> *Sacramento Nav. Co.* v. *Salz*, 273 U. S. 326, 330;
> *United States* v. *Hartwell*, 6 Wall. 385;
> *United States* v. *Corbett*, 215 U. S. 233, 242.

The intent of Congress in adding Section 14b(3) to the Bankruptcy Act of 1898 was to deny the benefits of a general discharge to those debtors who, by doing the act defined in Section 14b (3), have demonstrated their general unfitness for commercial intercourse.

In discussing the intent of Congress in adopting Section 14b(3) of the Bankruptcy Act, the Court in the case of *In re Day*, 268 Fed. 871, at page 872, stated:

> "Section 14b is addressed to the bankruptcy court only, and is not for the benefit of any particular creditor or class of creditors, and by its express terms may be invoked on any application for discharge by the trustee or other party in interest to entirely defeat the discharge. The purpose of the section is to preserve the discharge feature of the

> Bankruptcy Act from abuse, and deny its benefits to one who has shown himself unworthy of them in any of the ways specified in the section. The section is at bottom one of penalty or forfeiture, and one of the things penalized is the commercial dishonesty manifested by obtaining a credit on a materially false statement in writing, made to induce the credit."

The Court, in *Gilpin* v. *National Bank*, 165 Fed. 607, at page 612, spoke as follows:

> "The bankrupt who has made to a creditor, for the purpose of obtaining credit, a false statement,—that is, one intentionally and knowingly untrue, is unworthy of the privilege of a discharge under the act, and the court will act upon information brought to it of such an act by any party in interest. It will be at once conceded on all hands, that such a bankrupt is unworthy, and should not receive the favor accorded by the law to the honest but unfortunate debtor. Some of the cases cited by the appellee conflict with the view here stated, but the weight of authority, as of reason, supports it."

> "The basis of this bar to discharge is that the moral turpitude of such conduct demonstrates the bankrupt's general unfitness for commercial intercourse."

> *Remington on Bankruptcy*, 3rd Ed., Vol. 7, pp. 354, 355.

An objecting creditor is not confined to simply urging the non-dischargeability of his debt, but may also prevent the bankrupt's discharge from all of his debts.

> *In re Day* (*supra*);
> *Friend* v. *Talcott*, 228 U. S. 27, at page 40.

Any party in interest may oppose the discharge of a

bankrupt under Section 14b(3) even though the representations were not made to him nor the money given by him.

In re Harr, 143 Fed. 421;
In re Schaffer, 169 Fed. 724;
In re Miller, 192 Fed. 730;
In re Fackler, 246 Fed. 864.

Section 14b(3) was added to the Bankruptcy Act of 1898 by the Amendatory Act of 1903, as one of four new objections to discharge added at that time to meet a condition resulting from the adoption of the Bankruptcy Act of 1898 without sufficient bars to discharge. It is generally conceded that the Bankruptcy Act of 1898 was woefully weak in its provisions limiting the discharge of bankrupts. As a result, for the five years immediately following its enactment, the country witnessed what has been described as a commercial jail delivery. Congress in 1903 realized the need of restricting the granting of general discharges in bankruptcy and adopted, among others, Section 14b(3). For an authoritative discussion of the history of the enactment of this section, the Court is respectfully referred to Gilbert's Collier on Bankruptcy, 1927, page 309. There is also a discussion of the subject in the case of *In re Gilpin*, 160 Fed. 171.

It is respectfully submitted that a bankrupt, who has obtained money or property upon materially false statements in writing from another, whether it be for another person, a corporation or a partnership, is as unfit for commercial intercourse as a bankrupt who has obtained money or property upon materially false statements in writing for himself. Both are a menace to commerce and neither should be granted the high privilege of a discharge in bankruptcy.

(c) *To give such a narrow construction to Section 14b(3) would be to give it a meaning contrary to the reason and spirit of the Bankruptcy Act.*

The true reason and spirit of the Bankruptcy Act has often been the subject of discussion in this Court and in other Federal Courts.

In *Wetmore* v. *Markoe*, 196 U. S. 68, at page 77, the Court says:

> "Systems of bankruptcy are designed to relieve the honest debtor from the weight of indebtedness which has become oppressive and to permit him to have a fresh start in business or commercial life, freed from the obligation and responsibilities which may have resulted from business misfortunes."

In *Burlingham* v. *Crouse*, 228 U. S. 459, at page 473, the Court says:

> "It is the twofold purpose of the Bankruptcy Act to convert the estate of the bankrupt into cash and distribute it among creditors and then to give the bankrupt a fresh start with such exemptions and rights as the statute left untouched. In the light of this policy the act must be construed."

In *Hanover National Bank* v. *Moyses*, 186 U. S. 181, at page 192, the Court says:

> "The determination of the *status* of the honest and unfortunate debtor by his liberation from encumbrance on future exertion is matter of public concern, and Congress has power to accomplish it throughout the United States by proceedings at the debtor's domicil."

In *Williams* v. *U. S. Fidelity Co.*, 236 U. S. 549, at pages 554-555, the Court says:

> "It is the purpose of the Bankrupt Act to convert

> the assets of the bankrupt into cash for distribution among creditors and then to relieve the honest debtor from the weight of oppressive indebtedness and permit him to start afresh free from the obligations and responsibilities consequent upon business misfortunes. *Wetmore* v. *Markoe*, 196 U. S. 68, 77; *Zavelo* v. *Reeves*, 227 U. S. 625, 629; Burlingham *v.* Crouse, 228 U. S. 459, 473. And nothing is better settled than that statutes should be sensibly construed, with a view to effectuating the legislative intent. *Lau Ow Bew* v. *United States*, 144 U. S. 47, 59; *In re Chapman*, 166 U. S. 661, 667."

In the case of *Neal* v. *Clark*, 95 U. S. 704, at page 709, the Court says:

> "Such a construction of the statute is consonant with equity, and consistent with the object and intention of Congress in enacting a general law by which the honest citizen may be relieved from the burden of hopeless insolvency. A different construction would be inconsistent with the liberal spirit which pervades the entire bankrupt system."

In *In re Harr*, 143 Fed. 421, at page 424, the Court says:

> "To sustain the contention of the learned counsel for the bankrupt, the court would have to interpolate after the word 'person' the following: 'Who is a creditor of the bankrupt at the time of his adjudication'—or add the proviso, 'That the bankrupt estate was injuriously affected thereby.' This is not permissible; courts cannot legislate under our system of government. They can only enforce or construe the laws as enacted by the legislative department. One of the main objects of the bankruptcy act is to protect unfortunate, but honest, debtors. Fraudulent debtors are not intended to be protected, nor to escape payment of their just liabilities. The bankruptcy act as originally

passed did not contain this provision. No doubt the experience after the enactment of the original bankruptcy act in 1898 caused Congress to make this amendment in order to prevent bankrupts to obtain property on credit upon false representations from enjoying the benefits of the act and receiving a discharge from their liabilities. When the intention of the lawmakers is clear, the duty of the courts is to carry it into effect."

In *Barton Bros.* v. *Texas Produce Co.*, 136 Fed. Rep. 355, at page 357, the Court says:

> "The spirit of the bankrupt act is commendable. Its purpose is to release the honest debtor from the burden of debts which he is unable to longer carry; to give freer play to his energies and enterprises, that he may thereafter be better able to support himself and those dependent upon his earnings, and thereby be in position to render a better service to the state and to society."

In re James, 181 Fed. Rep. 476, at page 479, the Court says:

> "We think not. A bankrupt in order to be entitled to a discharge, must come into court with clean hands, and show that his conduct has been that of an honest, upright man. But, under the circumstances of this case, it cannot be reasonably insisted that a court of justice should, by its decree, proclaim to the public that one who concealed his goods for the purpose of defrauding his creditors had dealt fairly with his fellowman, and that such an individual is entitled to the benefits of an act intended to promote honesty and fair dealing."

In re Feinberg, 287 Fed. Rep. 254, at page 255, the Court says:

> "(1) The Bankruptcy Act authorizes the judge

to discharge the Bankrupt, unless he has, *inter alia* [Section 14b (3], 'obtained money or property on credit upon a materially false statement in writing, made by him to any person or his representative for the purpose of obtaining credit from such person.' The bankrupt's discharge is not the primary purpose of the Bankruptcy Act, nor is it an absolute right of the bankrupt. It is a privilege the law extends to him, unless it is shown that he has done one or more of the things provided in Section 14 as grounds for refusal of his discharge. The primary purpose of the act is to collect the assets of the bankrupt and distribute them fairly and equitably among his creditors. In *re* Miller (D. C.), 135 Fed. 591; In *re* Dresser & Co., 146 Fed. 383, 76 C. C. A. 655; In *re* Levenstein (D. C.), 180 Fed. 957.

"(2) As the court said in the latter case, if the bankrupt's dealings have been fair and honest, he may be discharged from the balance of his indebtedness as an incentive to further honest effort to obtain a livelihood. It must be obvious then that he who seeks to avoid his debts under the Bankruptcy Act must comply strictly with its provisions."

In re Levenstein, 180 Fed. Rep. 957, at page 958, the Court says:

"That law furnishes the only method by which one can escape the payment of his debts, except by actually paying them in full or settling them by compromise. Neither this law nor any of its predecessors was passed by Congress for the particular purpose of enabling the debtor to cancel his debts. The primary purpose of all such laws is to distribute the assets of the bankrupt equally and fairly amongst his creditors, and as an incident thereto the present law provides that he may, if his dealings have been fair and honest, be discharged from the balance of his indebtedness as

> an incentive to further honest effort to obtain a livelihood. It must be obvious, then, that he who seeks to avoid his debts under the bankrupt act (Act July 1, 1898, c. 541, 30 Stat. 550 [U. S. Comp. St. 1901, p. 3427]) must comply strictly with its provisions. * * * The bankrupt undertakes to show that he is an honest man, but has been unsuccessful; that he has committed no fraud, but has been the victim of misfortune. If he can establish these facts, he goes free; if he cannot, he has wasted his time and bothered the court to no good purpose."

The general subject of the Bankruptcy Law, its intents and purposes, was treated by Blackstone in his Commentaries on the English Law, see Cooley's Blackstone's Commentaries on the English Law, Fourth Edition, Book II, pages 471-474.

Story in his Commentaries on the Constitution of the United States, §1106, defined the objects of bankruptcy laws as follows:

> "Without stopping at present to consider what is the precise meaning of each of these terms, as contradistinguished from the other, it may be stated, that the general objects of all bankrupt and insolvent laws is, on the one hand, to secure to creditors an appropriation of the property of their debtors *pro tanto* to the discharge of their debts, whenever the latter are unable to discharge the whole amount; and, on the other hand, to relieve unfortunate and honest debtors from perpetual bondage to their creditors, either in the shape of unlimited imprisonment to coerce payment of their debts, or of an absolute right to appropriate and monopolize all their future earnings. * * * One of the first duties of legislation, while it provides amply for the sacred obligation of contracts, and

> the remedies to enforce them, certainly is, *pari passu*, to relieve the unfortunate and meritorious debtor from a slavery of mind and body, which cuts him off from a fair enjoyment of the common benefits of society, and robs his family of the fruits of his labor and the benefits of his paternal superintendence."

The true reason and spirit of the Bankruptcy Act may also be seen in the history of the development of Bankruptcy Law. The history of this law indicates that it was originally merely a creditors' law aimed at the equitable distribution of the bankrupt's estate among his creditors and giving no thought to freeing the debtor from his debts. The modern bankruptcy laws however, have provided for the discharge from their debts of *honest* but unfortunate debtors under certain circumstances. The attention of the Court is respectfully drawn to a full and complete résumé of the history of the Bankruptcy Act of 1898 and the English and early American Bankruptcy Acts upon which it was based contained in *Remington on Bankruptcy*, Third Edition, Vol. I, pages 1 to 21. Mr. Remington first considers the origin of the law of bankruptcy and refers to the ancient Jewish and Roman debtor laws, then points out that the American bankruptcy laws are derived from the English bankruptcy acts and then considers in detail the English and American bankruptcy statutes.

At page 18 he gives his views on the meaning and idea of bankruptcy law today and from this we quote the following:

> "(n) *Meaning and Idea of Bankruptcy Law Today.*—This somewhat extended review of the origin and history of the Bankruptcy Laws of the past, from which the present system of bankruptcy law

has sprung, places one in a position more intelligently to define the idea of bankruptcy law as it exists to-day in the United States, not meaning by this that the definition so arrived at would have been a proper one at all stages of history; for, as already noted, the idea and objects of bankruptcy law have undergone considerable development and change since the time the first harsh statutes of England were passed to repress and suppress the 'offense' as it was then considered to be, of bankruptcy, and to punish the offender.

> "Justice Miller, in Wilson *v.* City Bank, 17 Wall. (U. S.) 473, 21 L. Ed. 723, says: 'The primary object of a bankruptcy law is to secure a just distribution of the bankrupt's property among his creditors: the secondary object is the release of the bankrupt from the obligation to pay his debts.'"

With particular reference to the history of the provisions relating to the discharge of bankrupts, the attention of the Court is respectfully drawn to a treatment of the subject contained in *Remington on Bankruptcy*, Third Edition, Volume VII, pages 189 to 194, from which we quote the following:

> "It has been noted already that bankruptcy law was originally a creditors' law—a swift, sharp remedy placed in the hands of creditors for seizing upon the property and person of absconding or hiding debtors, for ferreting out concealed assets, for reducing them to money, and for distributing them equitably among creditors. There was originally no thought of affording any relief therein to the debtor himself by freeing him from further molestation for his old debts.
>
> * * * * * * * *

"And perhaps it is not an absolutely essential idea, or part, of bankruptcy law, but merely an incident to it.

* * * * * * * *

"Indeed, bankruptcy was a felony, being expressly declared such by the statute of King James I, and the bankrupt could be thankful if his adjudication as bankrupt did not result in his being imprisoned as a felon.

"But, as a clearer appreciation arose of the vast change that was taking place in the commercial world; that men were beginning to do business for the general market, no longer waiting for specific orders, and that, as a consequence, business was coming more to be done on credit, and that it was becoming more necessary for producers and merchants alike to take chances in disposing of their goods upon the general market, a modified feeling arose with regard to those who failed in business. It began to be understood that a merchant, obtaining goods on credit and taking risk in disposing of them upon the general market, might miscalculate, or might be improvident, and might fail, leaving a great body of creditors unpaid, and yet that he might not be a criminal nor be of fraudulent mind. It was precisely this change in the manner of doing business that, as we have seen, made inadequate the old common-law remedies of attachment and execution, and brought about the enactment of the first Bankruptcy Act. But, at first, as the provisions of the statutes would seem to indicate, the real import and extent of the change do not seem to have been apprehended. Finally, however, a more just and sensible understanding of the actual situation came about; and the idea developed that, if a debtor, who had thus taken chances and failed, nevertheless did all he could, thereupon, to aid his creditors in discovering assets and in realizing the most out of them, he should be granted a

discharge from the unpaid and unsatisfied remainder, the idea being three-fold: That it was just and humane to the debtor himself, that it aided creditors in discovering and recovering assets, and that it was in the interest of a sound public policy not to keep the debtor forever in bondage to his debts, but to restore his energies to the business community.

"This idea of a discharge first became implanted in bankruptcy jurisprudence in the reign of Queen Anne, about one hundred and sixty years after the first bankruptcy law was enacted. The first provision for discharge will be found quoted in the Introduction at § (i).

"Thus, in the beginning, the privilege of discharge was granted very sparingly, and was left much to the discretion of the court.

"The first United States Bankruptcy Act that provided unqualifiedly for the discharge of the debtor was that of 1841."

With reference especially to the history of the discharge features of the Bankruptcy Act we quote the following from *Gilbert's Collier on Bankruptcy*, 1927, page 307 and 308:

"1. HISTORY AND COMPARATIVE LEGISLATION.

"*a. Discharges under Roman and continental systems.*—Republican Rome punished the bankrupt with slavery, and, it is said, in some cases, even permitted the creditors to prorate the debtor's body, as well as his estate; Rome under the emperors, however, granted a discharge to the honest insolvent. The savagery of the early Latins, though much softened, still survives in the continental bankruptcy systems of to-day. Thus, in France, not only must a bankrupt in effect pay his debts in full, but there are three classes of bankrupts: (1) those whose condition is due to misfortune, and who are, therefore, not liable to imprisonment; (2)

those who have been guilty of misconduct not tantamount to an actual fraud, who may be imprisoned from one month to two years; and (3) those whose bankruptcy is fraudulent, who may be sentenced to penal servitude for not less than five nor more than twenty years. These restraints on the liberty of the dishonest trader are characteristic of all European laws. They are a survival of the time when inability to pay a debt was a crime.

"*b. Discharges under English and Canadian systems.*—England stands about midway between the above referred to systems and our own. Fraudulent bankruptcy is a crime, but, except as against certain well-defined statutory objections, a discharge may generally be obtained whatever be the rate per cent. paid. The Canadian act is similar in effect to the English statute as regards discharges.

"*c. Origin and nature of discharge.*—We have grown to look upon the discharge feature as the primal element of bankruptcy jurisprudence. Being too easily obtained, it has resulted in abuse, and, therefore, reprobation. The fact is, however, that the discharge feature was not grafted on our Anglo-Saxon bankruptcy system until the fourth year of Anne, two hundred and fifty years after England's first bankruptcy law, and that, in its inception, it was a device to keep bankrupts in England. Strictly speaking, it is no more a part of a bankruptcy law—which concerns itself with the equitable division of a debtor's assets—than are those sections which define bankruptcy crimes. It is unfortunate that our legislators and jurists have so long overlooked its origin. Else we would not to-day, from this point of view, seem a people given to financial jubilees. The fundamental and original element of every system of bankruptcy has been to provide for and regulate the distribution of the bankrupt's property equally among his creditors; latterly a sec-

ond element was added in the provisions for discharge upon such terms and conditions as the act may provide.

For further discussions on this point see the following:

15 *Harvard Law Review* 829;
66 *Pa. Law Review* 223;
21 *Am. Leg. News* 563;
Re Broun, 3 De G. & J. 369;
Re Lawrence, 30 L. J. B. K. 33.

(d) *The Courts which have construed Section 14b (3) have not generally so construed it so as to require that the money or property be received by the bankrupt personally.*

In re Aldridge, 168 Fed. 93;
In re Dresser, 144 Fed. 318;
In re Bleyer, 215 Fed. 896;
Pech v. *Lowenbein*, 178 Fed. 178;
Frank v. *Michigan Paper Co.*, 179 Fed. 776;
Ragan, Malone & Co. v. *Cotton & Preston*, 200 Fed. 546;
In re Terens, 172 Fed. 938.

(e) *The Courts do not place such a narrow construction on the very similar False Pretense Statutes.*

It is to be noted that Section 14b(3) is very similar to the criminal statutes against obtaining money by false pretenses. The construction placed upon these statutes should therefore be helpful to the Court in construing Section 14b(3).

In order to sustain a conviction for obtaining money or property by false pretenses, the Courts today do not generally require that the money or property must have been received by the accused.

Commonwealth v. *Harley*, 7 Met. (Mass.) 462; 1844.

Commonwealth v. *Langley*, 169 Mass. 89; 1897.

Fisher v. *State*, 161 Ark. 586; 1923.

People v. *Woods*, 59 Cal. App. 740; 1922.

People v. *Aronson*, 156 N. Y. Supp. 396; 1915.

The Court in the case of *In re Applebaum*, 11 Fed. (2d) 685, at page 687, relied upon by the petitioner herein, spoke as follows:

> "The English statute against false pretenses, in its original form, was interpreted as requiring the accused to get the property. Rex *v.* Garrett, 6 Cox C. C. 260; Jones *v.* U. S., Fed. Cas. No. 7499; Willis *v.* People, 19 Hun 84; People *ex rel.* Phelps *v.* General Sessions, 13 Hun 396, 400; Bracey *v.* State, 64 Miss. 26, 8 So. 165. It was changed (24 and 25 Vict. c. 96, §89), and to-day either by statute or by decision the law is generally the other way. (Commonwealth *v.* Harley, 7 Metc. (Mass.) 462; Commonwealth *v.* Langley, 169 Mass. 89, 47 N. E. 511; Fisher *v.* State, 161 Ark. 586, 256 S. W. 858; People *v.* Woods, 59 Cal. App. 740, 212 P. 41; People *v.* Aronson, 173 App. Div. 734, 156 N. Y. S. 396, affirmed 218 N. Y. 684, 113 N. E. 1062)."

It is respectfully submitted that an examination of the dates of the leading decisions cited in the case of *In re Applebaum* quoted above indicates that in 1903, the date of the enactment of Section 14b(3), the generally accepted construction of the False Pretense Statutes was that the accused need not receive the money or property personally. The rule in England was changed by statute (24 and 25 Vict. c. 96, §89) in 1861. This being the case, it may reasonably be presumed that Congress, in using words similar to those of the False Pretense Statutes, had in mind the meaning which was given to such words by

the courts at that time and did not intend to use the words with the meaning given to them by a few early decisions no longer generally followed. It is respectfully submitted that the Court in the case of *In re Applebaum* (*supra*) erred in *supposing* that Congress, when it chose the words of the False Pretense Statutes, accepted the original interpretation along with them and not the general meaning which was given to the words by the Court at the time of the enactment of the statute.

The False Pretense Statutes are criminal statutes and as such are strictly construed in favor of the accused. It is submitted that Section 14b(3), not being a criminal statute, should not be construed more strictly in favor of bankrupts than are the False Pretense Statutes in favor of criminals.

POINT II.

Assuming that Section 14b(3) of the Bankruptcy Act of 1898, as amended in 1903 and 1910, is to be properly construed to mean that the bankrupt must have received the "money or property" personally, the bankrupt herein comes clearly within its scope.

(a) *The bankrupt petitioner herein was the president and principal stockholder of the corporation which received the money obtained by his false statements and as such received a benefit as a result thereof.*

It is not necessary to ignore the corporate entity theory to find that the principal stockholder of a corporation, the assets of which exceeded its liabilities, exclusive of stock liabilities, by only $3,000,000, is benefited by having $1,500,000 poured into its coffers, especially at a time

when money was needed to keep the corporation from failure. The bankrupt herein was not the ordinary semi-interested president and stockholder of a large corporation. He was interested in the corporation as the legal structure into which had been molded his life work and his entire wealth and earnings. The corporation was to him no "third person." His attention to the corporation shows his interest. When the corporation first needed money he obtained it by mortgaging his real estate and that of his sister-in-law. When further money was necessary it came from the unauthorized use by the bankrupt of second mortgage bonds of the Levy Realty Company, and finally, when the large loan was needed, the bankrupt personally guaranteed each and every note. It is submitted that one does not give such unselfish attention to a "third person" or to a corporation when one expects to obtain no personal pecuniary benefit. When the bankrupt found that the padding of the books had been discovered, and that therefore no further loans could be expected, his feelings, as expressed in his own words, were, "I saw my finish, my financial finish" (Rec., 117). The attention of the Court is called to the fact that at such a moment he did not see the failure of the corporation as the end of a cold legal structure of which he was merely the president, but rather as his own finish.

(b) *The bankrupt herein was a creditor of the corporation which received the money obtained by his false statements and as such creditor obtained a benefit.*

The facts (Rec. 114) show that prior to the making of the loan to the corporation by the respondents herein, the bankrupt and his sister-in-law borrowed $550,000 on their real estate holdings and used the money to pay debts of the corporation. The record does not show that any of this money was repaid to the bankrupt. In fact,

the inference that must be drawn from the testimony of the bankrupt is that the money was not repaid. At the time of the obtaining of the loan from the respondents, therefore, the bankrupt was a creditor of the corporation.

It is respectfully submitted that it was to the interest of the bankrupt as such creditor to have $1,500,000 loaned to the corporation in order to keep it a going concern. By causing $1,500,000 to be advanced by respondents, he considerably increased his chances of having repaid the amounts which he expended from his own funds to meet the corporation's debts.

(c) *The bankrupt herein was the endorser of the entire series of notes of the corporation upon which the money obtained by his false statements was loaned and the bankrupt as such endorser obtained credit personally.*

> "An endorsement virtually means the giving of the money by the bank to the indorser, who, in turn, pays it over to the maker. By a short cut and means of credit and bookkeeping, the actual money is paid to the maker instead of indirectly to the indorser. Thus the indorser receives the benefit."
>
> *People* v. *Aronson, et al.*, 156 N. Y. S. 396, page 397; aff'd 218 N. Y. 684.

The principal debt of the bankrupt herein is that which arose out of the obtaining of the money in question (Rec., 133).

POINT III.

The bankrupt herein, upon the facts considered by the Circuit Court of Appeals, should be denied his discharge.

A bankrupt has no constitutional right to be discharged from his debts. He must look to the statute.

Hanover National Bank v. *Moyses*, 186 U. S. 181;
In re Neely, 134 Fed. 667.

A discharge in bankruptcy is a high privilege, to be granted only to honest debtors.

Wetmore v. *Markoe*, 196 U. S. 68, 77;
Hanover National Bank v. *Moyses*, 186 U. S. 181, 192;
Williams v. *U. S. Fidelity Co.*, 236 U. S. 549;
In re Harr, 143 Fed. 421, 424;
In re Feinberg, 287 Fed. 254, 255;
In re Levenstein, 180 Fed. 957;
In re James, 181 Fed. 476, 479;
Barton Bros. v. *Texas Produce Co.*, 136 Fed. 355, 357;
Remington on Bankruptcy (3rd Ed.), Vol. VII, page 189;
Gilbert's Collier on Bankruptcy, 1927, page 307.

The bankrupt herein has demonstrated his unfitness to be given the high privilege of a discharge. The facts of the case clearly demonstrate his commercial dishonesty.

POINT IV.

Wherefore it is respectfully submitted that the judgment of the Circuit Court of Appeals for the Fourth Circuit should be affirmed with costs, and the bankrupt herein denied his discharge.

Respectfully submitted,

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